

PROBATE & ESTATE PLANNING SECTION

July 2, 2007

CHAIR

DOUGLAS A. MIELOCK
313 S WASHINGTON SQ
LANSING 48933-2114
Phone: 517.371.8203
Fax: 517.367.7303

CHAIR-ELECT

LAUREN M. UNDERWOOD
32100 TELEGRAPH RD
STE 200
BINGHAM FARMS
48025-2454

VICE CHAIR

NANCY L. LITTLE
2125 UNIVERSITY PARK DR
STE 250
OKEMOS 48864-5903

SECRETARY

HAROLD SCHUITMAKER
181 W MICHIGAN AVE
STE 1
P.O. BOX 520
PAW PAW 49079-0520

TREASURER

GEORGE A. COONEY, JR.
30445 NORTHWESTERN HWY
STE 250
FARMINGTON HILLS
48334-3109

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JOAN C. VON HANDORF

WARREN

Approved Court Forms

P.O. Box 30048

Lansing, MI 48909

Re: Probate Forms Committee Meeting

Dear Sir or Madam:

The Probate and Estate Planning Council is proposing a new form and some changes in existing forms for discussion at the Probate Forms Committee Meeting scheduled for September 6, 2007. In general, we are proposing changes in the enclosed forms in order to engender uniformity of practice in the probate courts.

We have enclosed a proposed change to the Letter of Authority (PC 572) to add an instruction to state that the minimum fee for a Letter of Authority is \$12. MCL 600.2546 states that the fee for certified copies is \$10 plus \$1 per page. We have been advised that SCAO's interpretation of this statutory section is that the charge for each letter of authority should be \$12 or more, depending on the number of pages. Courts are charging from \$0 to \$12 for letters of authority. An instruction indicating that the minimum charge should be \$12 may resolve this uniformity of practice issue.

A new form entitled Affidavit of Incumbency is also enclosed. Some courts are requiring this form before an estate can be closed when estate assets are poured over to a trust, even though MCR 5.501(E) provides that a trustee "may" file an affidavit of incumbency when assets from a decedent estate are transferred to a trust. Attorneys are requesting a form to deal with this requirement. We have enclosed a proposed form entitled Affidavit of Incumbency with an instruction that filing the Affidavit of Incumbency is not required by statute or court rule.

Some courts are requiring that the petitioner file the form Testimony Interested Persons (PC 565) before the court will issue an order for a small estate. Pursuant to MCL 700.3982 the court may require additional

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information. Since this requirement of filing the Testimony Interested Persons often takes attorneys by surprise, we propose to add an instruction to PC 556 warning that the court may require that the petitioner file a Testimony Interested Persons be filed along with the Petition and Order for Assignment.

There is often confusion as to what type of guardianship petition to file for a disabled person. If the cause for certain conditions occurs before age 22, a Petition for a Guardianship for a Developmentally Disabled Individual (PC 658) should be filed rather than a Petition for Appointment of Guardian of Incapacitated Individual (PC 625). In order to help the clerks at the counter to flag this issue, we propose adding a line to the Petition for Appointment of Guardian of Incapacitated Person asking about the age that the disability occurred.

The problem of valuing joint property on a conservatorship inventory is still with us. In order to flag joint assets, we propose that a separate column be added to the inventory that the conservator can check if property is held jointly with others. We also propose adding an instruction that joint property should be valued at 100% of its value, with information about the other joint owners provided in the description of the property.

We appreciate the opportunity to make suggestions to the Probate Forms Committee and to submit proposed forms for approval. Please contact Joan Von Handorf at 248-421-0477 if you have any questions or suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Mielock", written in a cursive style.

Douglas A. Mielock
Chair of Probate and
Estate Planning Section

Enclosures

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF

PETITION AND ORDER FOR ASSIGNMENT

FILE NO.

Estate of _____, decedent **XXX-XX-**
Last four digits of SSN

PETITION

I, _____, represent that:
Name and relationship1. Decedent died on _____.
Date2. ☐ Decedent was a resident of _____ in this county.
City/Township☐ Decedent lived out of Michigan and left an estate within this county to be administered.

3. Funeral and burial expenses are \$ _____.

The following persons have paid the following amounts toward the funeral and burial expenses (statements and receipts are attached):

NAME	AMOUNT	NAME	AMOUNT

The amount of funeral and burial expenses remaining unpaid is \$ _____.

The total value of the decedent's property remaining after payment of funeral and burial expenses does/will not exceed \$15,000 as adjusted for cost of living.

4. The decedent's property and its gross value is as follows: (attach separate sheet if necessary)

DESCRIPTION OF PROPERTY	VALUE
Total	0.00

SEE SECOND PAGE

Do not write below this line - For court use only

5. The name, age, relationship, and address of each heir is as follows:

NAME	AGE	RELATIONSHIP	ADDRESS

6. I REQUEST that the property listed above be assigned as follows:

- ☐ for funeral and burial expenses: \$ _____ to _____, \$ _____ to _____, and \$ _____ to _____.
- ☐ to the surviving spouse, _____.
- ☐ to the following heirs in the stated proportions: _____

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Attorney signature _____

Date _____

Name (type or print) _____ Bar no. _____

Petitioner signature _____

Address _____

Address _____

City, state, zip _____ Telephone no. _____

City, state, zip _____ Telephone no. _____

ORDER ASSIGNING ASSETS

7. IT IS ORDERED that the property described above is assigned as follows:

- ☐ a. for funeral and burial expenses: \$ _____ to _____, \$ _____ to _____, and \$ _____ to _____.
- ☐ b. to the surviving spouse, _____.
- ☐ c. to the following heirs in the stated proportions: _____

For 63 days from the date of this order, the share of each heir other than a surviving spouse or minor child shall be subject to any unsatisfied debt of the decedent up to the value of property received through this order.

Date _____

Judge _____ Bar no. _____

I certify that I have compared this copy with the original on file and that it is a correct copy of the original.

Date _____

Deputy register _____

Note to Petitioner: The Court may require additional documentation, such as } BOLD
Testimony, Interested Persons PC 565.